

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re: § Chapter 11
§
WESTMORELAND COAL COMPANY, *et al.*,¹ § Case No.: 18-35672 (DRJ)
§
Debtors. § (Jointly Administered)
§

**MAR-BOW VALUE PARTNERS, LLC'S NOTICE OF FORTHCOMING MOTION
DIRECTED TO ORDER GRANTING JOINT EMERGENCY MOTION BY DEBTORS
AND MCKINSEY RECOVERY & TRANSFORMATION SERVICES U.S., LLC**

(Relating to Dkt. Nos. 1422, 1423, and 1427.)

TO THE HONORABLE DAVID R. JONES,
UNITED STATES CHIEF BANKRUPTCY JUDGE:

Mar-Bow Value Partners, LLC (“Mar-Bow”), a creditor, files this *Notice* (“*Notice*”) of its forthcoming motion directed to the Order (Dkt. 1427) (the “Order”) granting the Joint Emergency Motion by Westmoreland Coal Company and Certain Debtor Affiliates and McKinsey Recovery & Transformation Services U.S., LLC in Furtherance of Mediation Agreement (Dkt. 1422) (the “Joint Motion”) as amended by the Supplement to the Joint Emergency Motion (Dkt. 1423) (the “Supplement”), and respectfully states:

THE JOINT MOTION AND ORDER

1. On or around January 16, 2019, this Court ordered McKinsey Recovery & Transformation Services U.S., LLC (“McKinsey”), the Debtors, and Mar-Bow to participate in a

¹ Due to the large number of debtors in these chapter 11 cases, for which joint administration has been granted, a complete list of the debtors and the last four digits of their tax identification, registration, or like numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent in these chapter 11 cases at <http://www.donlinrecano.com/westmoreland>. Westmoreland Coal Company’s service address for the purposes of these chapter 11 cases is 9540 South Maroon Circle, Suite 300, Englewood, Colorado 80112.

joint mediation conducted by the Honorable Marvin J. Isgur concerning (*inter alia*) Mar-Bow's Amended Objection (Dkt. 699) to the Debtors' application to hire McKinsey (Dkt. 452).

2. On February 19, 2019, the mediation terminated and Judge Isgur filed a mediation report, noting (*inter alia*) that Mar-Bow and McKinsey had not resolved their disputes during mediation.

3. On February 20, 2019, the Debtors and McKinsey filed the Joint Motion (Dkt. 1422). Briefly, the Joint Motion asked the Court to approve a process whereby, prior to filing further supplemental disclosures pursuant to Bankruptcy Rule 2014 in this case, McKinsey will hire its own agent to develop a protocol for McKinsey to use in making such disclosures. The Joint Motion also asked the Court to stay discovery on Mar-Bow's Amended Objection to the Debtors' application to hire McKinsey until McKinsey's open-ended period for supplementing disclosures has terminated.

4. On February 21, 2019, the Debtors and McKinsey filed the Supplement (Dkt. 1423), which withdraws the request for a stay of discovery because McKinsey had not conferred with Mar-Bow prior to filing the Joint Motion.

5. On February 21, 2019, before Mar-Bow had an opportunity to respond to the Joint Motion, the Court issued its Order (Dkt. 1427).²

² Mar-Bow's counsel at Boies Schiller Flexner LLP ("Boies Schiller") and McKinsey's counsel at Selendy & Gay LLP ("Selendy & Gay") discussed scheduling a meet-and-confer regarding discovery on or around February 20, 2019 (after the mediation terminated but before the Joint Motion was filed). Ultimately, counsel for Mar-Bow and McKinsey agreed to meet-and-confer by telephone on February 27, 2019 at 1:30 p.m. Eastern time, and Mar-Bow's counsel circulated a dial-in number. However, McKinsey's counsel did not appear for the scheduled telephone conference. Mar-Bow has reached out to McKinsey to re-schedule the meet-and-confer as soon as McKinsey's counsel is available.

NOTICE OF MOTION

6. Mar-Bow was not accorded an opportunity to address the Joint Motion. The Order makes reference to a hearing that did not occur. Accordingly, Mar-Bow wishes to alert the Court that it will file a motion directed to the Order (Dkt. 1427) and the Joint Motion (Dkt. 1422) no later than Thursday, March 7, 2019.

Dated: Houston, Texas
February 27, 2019

By: /s/ Michael D. Fritz

DIAMOND McCARTHY LLP
Allan B. Diamond (SDTX 12310)
adiamond@diamondmccarthy.com
Charles M. Rubio (SDTX 2108915)
crubio@diamondmccarthy.com
909 Fannin, Suite 3700
Houston, Texas 77010
Telephone: 713-333-5100
Facsimile: 713-333-5199

-and-

By: /s/ Steven Rhodes

STEVEN RHODES CONSULTING, LLC
Steven Rhodes (*pro hac vice*)
rhodessw@comcast.net
1610 Arborview Boulevard
Ann Arbor, Michigan 48103
Telephone: 734-646-5406

-and-

By: /s/ Daniel L. Lemisch

Daniel L. Lemisch (*pro hac vice*)
dlemisch@lakeviewcapitalinc.com
Lakeview Capital, Inc.
151 S. Old Woodward Avenue, Suite 400
Birmingham, Michigan 48009
Telephone: 248-554-4900

Attorneys for Mar-Bow Value Partners, LLC

CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2019, a true and correct copy of the foregoing Notice of Motion was served by electronic transmission to:

Zack A. Clement
ZACK A. CLEMENT PLLC
3753 Drummond Street
Houston, Texas 77025
zack.clement@icloud.com

-and-

Bruce D. Oakley
HOGAN LOVELLS
609 Main St., Suite 4200
Houston, Texas 77002
bruce.oakley@hoganlovells.com

-and-

Christine H. Chung
Jennifer Selendy
Faith Gay
Joshua Margolin
SELENDY & GAY
1290 Avenue of the Americas
New York, New York 10104
cchung@selendygay.com
jselendy@selendygay.com
fgay@selendygay.com
jmargolin@selendygay.com

Counsel for McKinsey

Patricia B. Tomasco
JACKSON WALKER L.L.P.
1401 McKinney Street, Suite 1900
Houston, Texas 77010
ptomasco@jw.com

Co-Counsel to the Debtors and Debtors in Possession

Gregory F. Pesce
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
300 North LaSalle
Chicago, Illinois 60654
gregory.pesce@kirkland.com

Co-Counsel to the Debtors and Debtors in Possession

Hector Duran
OFFICE OF THE UNITED STATES TRUSTEE
515 Rusk Street, Suite 3516
Houston, Texas 77002
hector.duran.jr@usdoj.gov

Counsel for United States Trustee

/s/ Michael D. Fritz

